

**United States Department of Labor
Employees' Compensation Appeals Board**

N.W., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Telford, PA, Employer)

**Docket No. 07-1085
Issued: December 13, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 14, 2007 appellant filed a timely appeal from the December 11, 2006 decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of his claim for an employment-related injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on January 30, 2006 as alleged.

FACTUAL HISTORY

On January 30, 2006 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim, Form CA-1, alleging that he injured his right knee when it popped and he felt that it "twisted on the inside" while he climbed stairs on his delivery route that day.

On January 31, 2006 appellant was examined by Dr. James Bumgardner, a Board-certified orthopedic surgeon, who reported that appellant had experienced "excruciating pain" in

his right knee since twisting it the previous day. Dr. Bumgardner noted that appellant had a history of right knee pain and had undergone arthroscopy and meniscectomy two years previously. Prior to twisting his knee on January 30, 2006, appellant's symptoms had been "okay" and his work tolerable. Because injections had not improved appellant's symptoms, he had considered total right knee replacement, but was trying to hold off as long as possible. Dr. Bumgardner indicated that recent x-rays showed that appellant's right knee was bone on bone. His examination of appellant's knee found extreme tenderness to palpitation, no effusion, a negative Lachman sign and a negative apprehension sign. Dr. Bumgardner diagnosed severe degenerative joint disease. He stated that appellant could return to work in a week or before, if he was feeling better. On January 31, 2006 April Smith, a physician's assistant, diagnosed a right knee sprain and recommended that appellant not return to work, but provided sedentary work restrictions.

On February 2, 2006 appellant's supervisor, Postmaster Tom Renner, stated that appellant had been on light duty since January 30, 2006 and that he was walking slowly and using a cane around the employing establishment. He reported that Joe Camuccio, the delivery supervisor, had seen appellant walking without a cane on the evening of February 1, 2006 at a Wal-Mart store.

On February 3, 2006 Dr. Steven Casey, a Board-certified orthopedic surgeon, removed appellant from work and placed him on bed rest. On February 6, 2006 Dr. Paul Weidner, a Board-certified orthopedic surgeon, opined that, as appellant's knee was causing ongoing problems and other forms of treatment had not been effective, knee replacement surgery was the best option. He kept appellant out of work until February 9, 2006 and then placed him on sedentary restrictions. In his request for total right knee replacement, Dr. Weidner noted that appellant had right knee arthroscopy in 2003 due to a previous workers' compensation injury.¹

On February 24, 2006 the Office notified appellant that he had submitted insufficient evidence to establish his claim and requested additional information. On March 12, 2006 appellant stated that he had originally injured his right knee in February 2003 and that the Office had accepted his claim for a torn meniscus. Following surgery to repair the tear, he worked with his orthopedic physicians to treat the knee and manage the pain through physical therapy, medication and other noninvasive procedures. This treatment plan was working until appellant injured his knee again on January 30, 2006. On that day he bumped his right knee against a porch banister as he began climbing some stairs to deliver mail. When appellant stepped onto his right leg he felt a pop and immediate pain. After the injury, he delivered to the remaining houses on the block with a considerable limp and severe pain, especially when going up and down stairs. Appellant returned to the employing establishment before finishing his route to complete the required paperwork while Mr. Renner telephoned his physician to set up an appointment. He denied the allegation that he was at Wal-Mart on the evening of February 1, 2006, stating that he was at home watching his 10-year-old daughter that evening while his wife took his son to the emergency room for a wrestling injury.

¹ The Office assigned the claim as File No. A3-2020246.

On March 13, 2006 Dr. Weidner stated that he and his partners treated appellant following a previous employment-related right knee injury. Appellant was treated conservatively, with the goal of holding off knee replacement as long as possible. However, his recent work injury required total knee replacement surgery sooner than expected. Dr. Weidner opined that a knee replacement was medically necessary to treat the severe arthritis related to appellant's previous injuries and work activities.

By decision dated April 7, 2006, the Office denied appellant's claim on the grounds that he had not established that his condition was related to the accepted event of bumping his knee while ascending stairs on January 30, 2006. The Office found that the medical evidence was insufficient because his physicians failed to provide rationale as to how appellant's preexisting condition was aggravated by the accepted employment incident.

On April 29, 2006 appellant filed a request for an oral hearing. When he could not attend the hearing scheduled for October 16, 2006, the Office informed him that it would instead conduct a review of the written record. Appellant submitted written statements and additional medical records for the hearing representative's review.

On October 5, 2006 appellant indicated that he had arthritis in both of his knees, but only his right knee was causing him difficulty. The difficulty with his right knee began on February 11, 2003 when he sustained an accepted employment injury, File No. A3-2020246. Appellant stated that he was able to work with treatment until he reinjured his right knee on January 30, 2006. He returned to work after his knee surgery on June 21, 2006 and had been working without restrictions since August 2006.

In a May 5, 2006 report, Dr. Weidner stated that he had followed appellant's right knee for changes since February 2003. He indicated that prior to 2003 appellant had no problems with the knee despite the presence of arthritic changes. After the accident, appellant had "further problems with his knee that have necessitated a total knee replacement." He opined that the 2003 accident expedited and precipitated the requirement of a subsequent arthroscopic surgery and then a total knee replacement. In an October 12, 2006 statement, Dr. Weidner noted that appellant was seen on an emergency basis after "reinjuring his knee at work." He stated that the knee was swollen and painful and that the diagnosis was "severe arthritis of [appellant's] right knee, which was reagravated." Dr. Weidner reported that appellant never fully recovered the ability to return to work between his January 2006 injury and his March 20, 2006 total knee replacement surgery.

By decision dated December 11, 2006, the Office hearing representative affirmed the Office's denial of appellant's claim. He found that the evidence did not link appellant's knee condition to his January 30, 2006 employment incident. The Office hearing representative stated: "Although [appellant] may have experienced some swelling and pain in the knee following the January 30, 2006 work injury, there is minimal evidence to support that this trauma caused the need for a total knee arthroplasty." The Office hearing representative found that appellant had not met his burden of proof to establish that he sustained a compensable injury in the performance of duty on January 30, 2006.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.³

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether "fact of injury" has been established. "Fact of injury" consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the incident caused a personal injury, and, generally, this can be established only by medical evidence.⁴

When determining whether the implicated employment factors caused the claimant's diagnosed condition, the Office generally relies on the rationalized medical opinion of a physician.⁵ To be rationalized, the opinion must be based on a complete factual and medical background of the claimant,⁶ and must be one of reasonable medical certainty,⁷ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

ANALYSIS

The Office accepted that appellant bumped his knee on January 30, 2006 in the performance of his duties as a letter carrier and that, as a result of this incident, he "may have experienced some pain and swelling in the knee." Therefore, the issue to be determined is whether appellant has established that he sustained an injury as a result of that incident.

In a January 31, 2006 report, Dr. Bumgardner, a Board-certified orthopedic surgeon, stated that appellant had undergone arthroscopy and meniscectomy two years previously and that his symptoms had been tolerable, but had not substantially improved. He reported that since appellant twisted his knee at work the previous day, he had been in great pain. Dr. Bumgardner

² 5 U.S.C. §§ 8101-8193.

³ *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Ellen L. Noble*, 55 ECAB 530 (2004).

⁵ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁶ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ *John W. Montoya*, 54 ECAB 306 (2003).

⁸ *Judy C. Rogers*, 54 ECAB 693 (2003).

examination revealed extreme tenderness, but no Lachman or apprehension signs or effusion. He diagnosed severe degenerative joint disease and recommended that appellant stay off of work for a week.

On March 13, 2006 Dr. Weidner stated that he had treated appellant conservatively since his 2003 injury with the goal of avoiding total knee replacement surgery as long as possible. He opined that appellant's January 2006 employment incident had required urgent total knee replacement surgery sooner than expected. On October 12, 2006 Dr. Weidner stated that appellant had been seen on an emergency basis after "reinjuring his knee at work" on January 30, 2006. He stated that appellant's knee was swollen and painful, leading to the diagnosis of aggravation of severe arthritis of his right knee. Dr. Weidner reported that appellant was partially disabled between January 30 and March 20, 2006, when the total knee replacement surgery occurred.

The Board finds that the reports of Dr. Bumgardner and Dr. Weidner establish that appellant sustained an injury when he bumped his knee on January 30, 2006. Dr. Bumgardner provided the factual history of the employment incident and noted that appellant's knee was extremely tender. His associate, Dr. Weidner, diagnosed aggravation of severe degenerative arthritis based on appellant's medical history and findings of swelling and pain. They recommended that appellant stop work or work light duty as a result of this injury. The Board has held that the Office must separately consider the issues of "fact of injury" and any disability or condition arising from that injury.⁹ The Board notes that there is no credible dispute about the employment incident or appellant's injury, notably the right knee swelling which was readily apparent.¹⁰ For these reasons, the Board finds that appellant met his burden of establishing fact of injury.

On remand, the Office should determine any periods of disability or medical treatment causally related to his January 30, 2006 employment injury.

CONCLUSION

The Board finds that appellant established that he sustained an injury in the performance of duty on January 30, 2006 as alleged. The case is remanded for a determination of whether he is entitled to any medical benefits or wage-loss compensation associated with his accepted injury.

⁹ See *Elaine Pendleton*, *supra* note 3 at 1150 ("[A]cceptance of fact of injury is not contingent upon the employee concurrently establishing that his or her disability and/or a specific condition for which compensation is claimed are causally related to the employment injury.").

¹⁰ *Elaine Pendleton*, *supra* note 3 at 1151.

ORDER

IT IS HEREBY ORDERED THAT the decision of the hearing representative of the Office of Workers' Compensation Programs dated December 11, 2006 is set aside and the case is remanded for action consistent with this decision.

Issued: December 13, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board